

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

MICHAEL DUANE SMITH

Case No. 05-70467

Plaintiff,

DISTRICT JUDGE  
ARTHUR J. TARNOW

v.

MAGISTRATE JUDGE  
R. STEVEN WHALEN

CITY OF MOUNT CLEMENS and  
OFFICER STEVEN ANDREWS, in his  
individual and official capacities,

Defendants.

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**ORDER ADOPTING REPORT AND RECOMMENDATION [90],**  
**DENYING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT [83],**  
**and**  
**DENYING PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT AS TO**  
**LIABILITY [81]**

Before the Court is the Magistrate Judge's Report and Recommendation [90], filed August 20, 2009, regarding Defendants' Motion for Summary Judgment [83] and Plaintiff's Motion for Partial Summary Judgment as to Liability [81]. The Report and Recommendation recommends that both motions be denied.

By the September 8, 2009, deadline, none of the parties had filed an objection to the Report and Recommendation. There having been no objection, and the Court having reviewed the record and being fully advised in the premises,

**IT IS HEREBY ORDERED** that the Report and Recommendation [90] is **ADOPTED**.

**IT IS FURTHER ORDERED** that Defendants' Motion for Summary Judgment [83] is **DENIED**.

**IT IS FURTHER ORDERED** that Plaintiff's Motion for Partial Summary Judgment as to Liability [81] is also **DENIED**. This matter shall be set for trial.

**SO ORDERED.**

S/ARTHUR J. TARNOW

Arthur J. Tarnow

United States District Judge

Dated: October 6, 2009

I hereby certify that a copy of the foregoing document was served upon counsel of record on October 6, 2009, by electronic and/or ordinary mail.

S/THERESA E. TAYLOR

Case Manager